

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ZELLA MAYE FREEMAN,

Plaintiff,

v.

CITY OF FRESNO, R. GARRISON
(F.P.D. Badge No. 780), MARK
A. YEE (F.P.D. Badge No. 692),
J. CAPRIOLA (F.S.O. Badge No.
7622), I. BARRIMOND (F.S.O.
Badge No. 1153), J. HOLLINS
(F.S.O. Badge No. 2346), R.
PEREZ (F.S.O. Badge No. 6169),
A. SIMONSON (F.S.O. Badge No.
9364), inclusive,

Defendants.

1:05-CV-00328 OWW SMS

MEMORANDUM DECISION AND ORDER
DENYING WITHOUT PREJUDICE
PLAINTIFF'S MOTION FOR HEARING
REGARDING PROBABLE CAUSE

1. INTRODUCTION

Plaintiff Zella Maye Freeman ("Freeman") moves for a hearing "regarding probable cause for issuance of a search warrant."¹ Defendants oppose.

2. PROCEDURAL BACKGROUND

Freeman filed her complaint on March 8, 2005. (Doc. 1, Complaint.) After an order was issued granting in part and denying in part Defendants' motion to dismiss on June 8, 2005,

¹ This motion is not typically brought in a civil proceeding but rather in criminal proceedings. The issue in this motion is more properly addressed on the merits on a motion for summary judgment.

Freeman filed a first amended complaint. (Doc. 24, First Amended Complaint ("FAC"), Filed June 28, 2005.) On July 7, 2005 Defendants J. Capriola ("Capriola"), I. Barrimond ("Barrimond"), R. Perez ("Perez"), and A. Simonson ("Simonson") filed an answer to Freeman's FAC. (Doc. 25, Answer to Amended Complaint by Capriola, Barrimond, Perez, and Simonson.) On July 27, 2005 Defendants City of Fresno, Mark A. Yee ("Yee"), and R. Garrison ("Garrison") also filed an answer to Freeman's FAC. (Doc. 26, Answer to Amended Complaint and Demand for Jury Trial by City of Fresno, Yee, and Garrison.) Freeman then filed a "motion for probable cause hearing regarding search warrant." (Doc. 50, Motion for Hearing, Filed June 30, 2006.) Defendants filed an opposition to Freeman's motion for probable cause on July 14, 2006. (Doc. 55, Memorandum in Opposition re Motion for Probable Cause "Opposition".)

3. FACTUAL HISTORY

A. Background of Case

Freeman alleges that on February 19, 2004, at around noon, City of Fresno and Fresno County peace officers, who were members of the Multi-Agency Gang Enforcement Consortium ("M.A.G.E.C.") unit, "demanded entry into [her] residence, threatening to shoot [her] if [she] did not open the door." (Doc. 24, FAC). Freeman was babysitting three children, all under five years of age, at the time. Freeman alleges she suffered injuries, both physical and mental, as a result of the invasion. She alleges the course of events as follows:

1. Defendants came to Plaintiff's front door demanded entry into Plaintiff's residence, and threatened to shoot

1 Plaintiff if she did not open the door
2 quickly enough.

3 2. After moving the minor children away
4 from the door, Plaintiff opened the door
under great physical, emotional, and
mental duress.

5 3. Defendants without Freeman's permission
6 then invaded her residence, with their
7 weapons drawn. Garrison violently
knocked Freeman onto the floor and
Garrison, Perez, and Simonson trampled
upon her person.

8 4. Freeman was extremely concerned about
9 the safety of the minor children in her
care.

10 5. Garrison, in callous disregard of the
11 injuries Freeman sustained, ordered her
12 to quickly stand up, under threat of
force. Freeman was unable to stand up
on her own.

13 6. Defendants searched Plaintiff's
14 residence, detained her under threat of
15 force and seized Plaintiff's son's
16 locked safe, as well as Plaintiff's
registered .32 caliber handgun, which
she lawfully owned.

17 7. Defendants did not show Freeman a search
18 warrant pertaining to said search of her
residence.

19 8. At the time of the above-mentioned acts,
20 Defendant City of Fresno, had a policy
and custom of negligently hiring,
21 training, and supervising its officers
who were assigned to work as part of,
22 and in support of, the M.A.G.E.C. unit.

23 9. On August 17, 2004, Plaintiff submitted
a Claim for Damages, which claims was
24 denied by Defendant City of Fresno, as
"insufficient" with leave to amend.
25 Thereafter, on September 7, 2004
Plaintiff presented an Amended Claim for
26 Damages for an "Unlimited" amount to
Defendant City of Fresno. (Doc. 24,
27 Exhibit A.) On September 9, 2004,
Defendant City of Fresno, rejected
28 Plaintiff's amended claim in its
entirety and advised Plaintiff that she

1 had six months within which to file a
2 lawsuit.

3 (Doc. 24, FAC.).

4 **B. Freeman's Request for Hearing on Probable Cause**

5 On June 30, 2006, Freeman moved for a Hearing to determine
6 whether probable cause existed for the issuance of the underlying
7 search warrant in this case. (Doc. 50, Motion for Hearing.)
8 Plaintiff alleges that Detective Yee's affidavit² dated February
9 17, 2004 in support of the warrant does not contain sufficient
10 facts to establish the finding of probable cause that would
11 justify a "crisis entry" search of Freeman's residence. (*Id.*)
12 Freeman's attorney provided a declaration stating that the facts
13 in the affidavit are insufficient to establish probable cause.
14 (*Id.*, Declaration Wesley E. Stupar.)

15 **4. DISCUSSION**

16 Freeman moves for a hearing to determine whether probable
17 cause existed for the issuance of the underlying search warrant
18 in this case. Freeman alleges that Detective Yee's affidavit
19 dated February 17, 2004 in support of the warrant does not
20 contain sufficient facts to establish the finding of probable
21 cause that would justify a "crisis entry" search of Freeman's
22 residence. Freeman does not provide the court with a copy of the
23 affidavit. Freeman only includes a declaration from her attorney
24 concluding that the facts in the affidavit are insufficient to
25 establish probable cause. Further, Freeman argues that she is
26 entitled to an evidentiary hearing to challenge the validity of

27 ² A copy of Yee's affidavit was not provided and is no where
28 found in the record.

1 the search warrant.³

2 Federal Rule of Civil Procedure 56(c) provides for summary
3 judgment when the pleadings, depositions, answers to
4 interrogatories, and admissions on file, together with the
5 affidavits, if any, show that there is no genuine issue as to any
6 material fact and that the moving party is entitled to judgment
7 as a matter of law. Fed. R. Civ. P. 56(c); *Lessard v. Applied*
8 *Risk Mgmt.*, 307 F.3d 1020, 1023 (9th Cir. 2002); *see also*
9 *Williams v. County of Santa Barbara*, 272 F.Supp. 2d 995, 1003-
10 1004 (C.D. 2003) (internal quotations omitted). The moving party
11 bears the initial burden of demonstrating the absence of a
12 genuine issue of material fact for trial. *Fairbank v. Johnson*,
13 212 F.3d 528, 531 (9th Cir. 2000); *see also Williams*, 272 F.Supp.
14 2d at 1004. A fact is material if it could affect the outcome of
15 the suit under the governing substantive law. *Id.* The burden
16 then shifts to the non moving party to establish beyond the
17 pleadings that there is a genuine issue for trial. *Id.*

18 It is unclear whether Freeman's attorney mistakenly intended
19 to file this motion that applies in a criminal case. The issue
20 of the accuracy and sufficiency of the affidavit to establish
21 probable cause for the underlying arrest warrant raises mixed
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23 ³ Freeman cites to *Franks v. Delaware*, 438 U.S. 154 (1978),
24 a criminal case, for the proposition that she is entitled to an
25 evidentiary hearing to challenge the validity of the search
26 warrant. *Franks* does not apply to this civil proceeding as it
27 involves a criminal proceeding where the Fourth Amendment
28 requires that a hearing be held to challenge the truthfulness of
factual statements made in the affidavit where there is a showing
that the affidavit was based on falsity or bad faith omissions of
relevant information. *Franks v. Delaware*, 438 U.S. at 155-156.

1 questions of fact and law. In this civil action nothing
2 prevented Plaintiff from deposing affiant about the affidavit.
3 Freeman bears the burden of showing that there is no issue of
4 material fact as to the existence of probable cause based on the
5 underlying affidavit. Discovery is closed in this case.
6 Plaintiff offers no explanation for failing to conduct the
7 necessary discovery.

8 **5. CONCLUSION**

9 This motion for a hearing to determine probable cause for
10 the arrest warrant is **DENIED**.

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12 **SO ORDERED**

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14 Dated: August 30, 2006

/s/ OLIVER W. WANGER

15 **OLIVER W. WANGER**
16 **United States District Judge**
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